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C O N F I D E N T I A L QUITO 001816

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TREASURY FOR MMALLOY AND MEWENS

E.O. 12958: DECL: 08/10/2017

TAGS: [ECON](#) [EINV](#) [EC](#)

SUBJECT: US COMPANIES MCI POWER GROUP AND NEW TURBINE, INC.
LOSE ARBITRATION CASE AGAINST ECUADOR

Classified By: Charge Jefferson T. Brown for reasons 1.4(b&d)

¶1. (U) On July 31, the arbitration tribunal established under the International Center for the Settlement of Investment Disputes (ICSID) ruled against U.S. firms MCI Power Group and New Turbine, Inc.(MCI-NT) in their international arbitration case against Ecuador. It ruled that ICSID did not have jurisdiction over the case because the U.S.-Ecuador Bilateral Investment Treaty (BIT) had not yet entered into force when the alleged events took place. It also ruled that MCI-NT could not prove violations of fair and equitable treatment by Ecuador after the BIT came into force, largely because those actions were continuations of disputes from before the BIT was in place.

U.S. Companies Bring Arbitration Under the BIT

¶2. (SBU) MCI-NT now own the company Seacoast which signed a contract in 1995 to supply electric generating capacity to the GOE through INECEL, the Ecuadorian national power company at the time. Seacoast claimed that it invested nearly \$40 million to install two power generation plants in 1996. A dispute arose regarding the duration of the contract, and Seacoast alleged that INECEL failed to pay \$20 million owed to Seacoast under the contract. Seacoast sold the company in 1997, after being unable renegotiate an acceptable contract with INECEL.

¶3. (C) MCI-NT initiated international arbitration against Ecuador under the BIT in December 2002. Ivor Massey, an executive of MCI Power Group, told Econoff on August 6 that the claim had been somewhat of a long shot, because the BIT entered into force in 1997 but the alleged violations for the most part took place before that. However, MCI-NT asked the tribunal to consider events that took place related to the case both before and after the BIT came into force. Massey alleged the Ecuadorian liquidation commission that was to resolve disputes following the termination of Seacoast's contract exhibited misconduct, some of which took place after the BIT came into effect.

COMMENT

¶4. (C) Although it ruled against MCI-NT's claim, the tribunal did not order the companies to pay Ecuador's legal costs, indicating that it considered MCI-NT's claim to have some merit. MCI-NT's legal counsel noted the firms could

request an annulment, which would allow them to resubmit the arbitration claim (he did not divulge possible reasons for this strategy). However, Massey stated that he considers a "political solution" (seeking support from the U.S. Congress to pressure Ecuador) as the only remaining option. Ecuadorian press largely heralded the award as a win on the merits for Ecuador, although some articles were more evenhanded and noted the decision was made on jurisdictional grounds. This award contradicts recent GOE assertions that ICSID consistently rules in favor of investors, and may impart confidence to Ecuador to continue with other ongoing arbitrations.

BROWN